

COMMITTEE CONFERENCE AND EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
for the Victorville 2)	07-AFC-1
Hybrid Power Project)	
_____)	

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

TUESDAY, JUNE 17, 2008

1:00 p.m.

Reported by:
John Cota
Contract No. 170-07-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

James D. Boyd, Presiding Member

Jackalyn Pfannenstiel, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Raoul Renaud, Hearing Officer

Susan Brown, Advisor to Commissioner Boyd

Tim Tutt, Advisor to Commissioner Pfannenstiel

STAFF AND CONSULTANTS PRESENT

Caryn Holmes, Staff Counsel

Sudanth Arachchige

David Flores

Ellie Townsend-Hough

Maggie Read

Misa Ward

APPLICANT

Michael J. Carroll, Attorney
Latham & Watkins

Tony Penna, Inland Energy, Inc.

ALSO PRESENT

Gloria D. Smith, Adams Broadwell Joseph & Cardozo,
representing California Unions for Reliable Energy
(CURE)

Tonya Moore, California Department of Fish and
Game (via telephone)

Sarah Head, ENSR (via telephone)

Arrie Bachrach, ENSR (via telephone)

Alan DiSalvo, Mojave Desert Air Quality Management
District (via telephone)

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

I N D E X

	Page
Proceedings	1
Opening Remarks	1
Introductions	1
Air Quality (First Discussion)	6
General Conditions of Certification GEN-1	22
Hazardous Materials Management	23
Soil and Water Resources	23
Testimony of Ellie Townsend-Hough	25
Cultural Resources	33
Geological and Paleontological Resources	36
Land Use	37
Traffic and Transportation	45
Transmission System Engineering	48
Testimony of Sudanth Arachchige	49
Air Quality (Second Discussion)	50
Biological Resources	55
Air Quality - Mr. DiSalvo	78
Adjournment	97
Reporter's Certificate	98

P R O C E E D I N G S

1:00 p.m.

PRESIDING MEMBER BOYD: Good afternoon, everybody. Welcome to this Committee Public Conference and Evidentiary Hearing on the Victorville 2 Hybrid Power Project. This is a hearing both on the Presiding Member's Proposed Decision and also the Committee is reopening the evidentiary record to hear additional testimony on biological resource conditions, particularly BIO-12 and -13.

ASSOCIATE MEMBER PFANNENSTIEL: Twelve and 18.

PRESIDING MEMBER BOYD: Oh. My eyesight. It looked like a three but it's an eight. Time to get the glasses checked again.

I am Jim Boyd, Presiding Member of the Committee. Of course, joined by Jackalyne Pfannenstiel, the Chairwoman and Associate Member of this Committee. Raoul Renaud, our Hearing Officer, is here, ready willing and anxious. I am going to turn the responsibilities over to him. So Raoul, if you would.

HEARING OFFICER RENAUD: Thank you, Commissioner Boyd. I think we made all the

1 introductions. Susan Brown, advisor to
2 Commissioner Boyd, Tim Tutt, advisor to
3 Commissioner Pfannenstiel.

4 What we are doing here today is
5 reviewing the comments submitted by the parties
6 with respect to the Presiding Member's Proposed
7 Decision. The Decision was released on May 30.
8 The Committee asked that the parties provide
9 written comments on the PMPD by Friday, June 13,
10 2008 at four p.m. and both the applicant and the
11 staff timely submitted comments.

12 I would like to say that we are very
13 grateful to the parties for the thoroughness and
14 clarity of the comments. You have both given the
15 PMPD a very solid review and given us a very
16 excellent tool that we can work from to get this
17 into final form.

18 Before we proceed to reviewing those
19 comments let's have introductions of the parties
20 who are present, starting with staff.

21 MS. HOLMES: Caryn Holmes, staff
22 counsel. In the audience are a number of members
23 of staff, some of who may be speaking later on.

24 HEARING OFFICER RENAUD: Thank you. And
25 a representative of CURE is here.

1 MS. SMITH: Gloria Smith, California
2 Unions for Reliable Energy. A point of
3 clarification. I received the applicant's and
4 staff's comments the moment they filed them on
5 Friday.

6 HEARING OFFICER RENAUD: Good.

7 MS. SMITH: And I went back and looked
8 at the notice and -- I had to call to get the
9 notice, and the notice said that comments weren't
10 due until June 30. So I am a little confused.
11 And I was wondering why comments were due after
12 this hearing. I am prepared to give oral comments
13 that would be very consistent with what I would
14 have submitted in writing, but briefer.

15 HEARING OFFICER RENAUD: Okay, I can
16 answer that question or you. The comments of the
17 parties were asked to be submitted by June 13 so
18 that we could incorporate them into this hearing.

19 Comments of members of the public are
20 not due until June 30. That's just because that
21 way there is a 30 day period allowed for providing
22 comments.

23 Now it is possible there was a version
24 of the notice that went out early on that had the
25 wrong date. I think -- Caryn, you're nodding.

1 MS. HOLMES: That's correct. I think I
2 pointed that out. I thought there was a
3 subsequent correction to that as a result.

4 HEARING OFFICER RENAUD: There was. I
5 know it was corrected. I hope that hasn't caused
6 CURE any problems. If it has let me know and
7 we'll try to make some allowance.

8 MS. SMITH: Yes.

9 HEARING OFFICER RENAUD: All right.

10 MS. SMITH: But like I said, I'm
11 prepared to give a very brief synopsis of our
12 comments so it shouldn't be a problem. Do you
13 agree?

14 HEARING OFFICER RENAUD: That's fine.

15 MS. SMITH: Okay.

16 HEARING OFFICER RENAUD: Sure, whatever
17 works for you works for us. All right, thank you.

18 And then on behalf of the applicant,
19 introductions, please.

20 MR. CARROLL: Good afternoon. Mike
21 Carroll with Latham & Watkins on behalf of the
22 applicant. And with me is Tony Penna with Inland
23 Energy, the developer of the project, on behalf of
24 the City of Victorville.

25 HEARING OFFICER RENAUD: Thank you very

1 much. And do you have any witnesses with you
2 today?

3 MR. CARROLL: No, we do not.

4 HEARING OFFICER RENAUD: All right, very
5 good.

6 And do we have anybody on the phone? I
7 think we are getting that information right now.

8 MS. MOORE: Tonya Moore from Department
9 of Fish and Game.

10 HEARING OFFICER RENAUD: Okay, thank
11 you. Anyone else besides Tonya Moore, Department
12 of Fish and Game?

13 (No response)

14 HEARING OFFICER RENAUD: All right. We
15 do have an open phone line here. Anybody wishing
16 to listen or participate can phone in to a toll
17 free number and hear what is going on in the room
18 and speak.

19 All right. We have two documents filed
20 by the applicant and the staff, which are their
21 comments. And I think what I would like to do,
22 unless anyone has a better idea, is to proceed
23 through both of those simultaneously, topic by
24 topic.

25 And I suggest we start with Air Quality

1 because that's the one that the staff addressed
2 first and also because it has got a lot of items
3 in it. The Air Quality comments, for the most
4 part, pertain to making changes to the Conditions
5 of Certification.

6 The Evidentiary Hearing was held on
7 April 3. Up to late on the eve of April 2 the
8 parties were still negotiating conditions of
9 certification for, among other things, Air
10 Quality. And as a result a lot of the details of
11 those were submitted after they are normally
12 submitted and will be included in the Final
13 Decision but were not included in the PMPD.

14 I have reviewed the comments of the
15 applicant and staff on Air Quality and for the
16 most part you are entirely in agreement about the
17 conditions of certification. I find very little
18 that you are not in agreement on. So what I would
19 suggest we do is simply discuss or address the
20 matters to which you are not in agreement. And
21 even as to those I think we can quickly find
22 common ground.

23 All right, let's first look at Condition
24 of Certification AQSC-6. This is the one about
25 the hours of construction activities and the

1 dates. And actually you both have language in
2 there right now that the one hour after sunrise to
3 one hour before sunset shall occur during July 15
4 and August 30. I am assuming you didn't mean it
5 to be just those two dates but you actually meant
6 from July 15 through August 30. So shall we
7 change it to so reflect?

8 MS. HOLMES: Yes.

9 MR. CARROLL: Yes.

10 HEARING OFFICER RENAUD: All right, very
11 good. And you did mean to include both July 15
12 and August 30?

13 MS. HOLMES: Yes.

14 HEARING OFFICER RENAUD: All right.
15 That will be the way that will read then. All
16 right.

17 On AQSC-1 the applicant has asked that
18 the 60 day deadline prior to start of ground-
19 disturbance be changed to 30 days prior to site
20 mobilization. And I guess my question is, is that
21 acceptable to staff?

22 MS. HOLMES: Yes.

23 HEARING OFFICER RENAUD: All right, then
24 that's what we will do.

25 And then on AQSC-9 applicant, let's see,

1 has asked that the deadline of road paving at
2 least 15 days prior to commencement of
3 construction be changed to paving of roads
4 sufficient to provide 18.1 tons of PM10 emission
5 reductions be complete no later than 15 days prior
6 to commencement of construction. Is that okay
7 with staff?

8 MS. HOLMES: No.

9 HEARING OFFICER RENAUD: Okay.

10 MS. HOLMES: Staff prefers to have all
11 of the air quality mitigation/emission reduction
12 credits in place prior to construction.

13 HEARING OFFICER RENAUD: Okay. So we
14 have a difference here. And just to sum up, as
15 written the condition would require the applicant
16 to complete all road paving in connection with
17 PM10 or dust reduction prior to commencement of
18 construction. Or 15 days prior to commencement.

19 And applicant is asking for a relaxation
20 of that so that the road paving sufficient to
21 provide 18.1 tons of PM10 reduction be completed
22 no later than 15 days prior to commencement of
23 construction.

24 Obviously the staff's requirement is
25 more stringent and therefore to be characterized

1 as more protective. How would you like to address
2 this? Do you want to provide testimony, either of
3 you? Is the applicant willing to make a --

4 MS. HOLMES: I am not an air quality
5 expert.

6 HEARING OFFICER RENAUD: Okay. Is the
7 applicant willing to make a concession here?

8 MR. CARROLL: Well perhaps we can
9 explain the basis for the request. The underlying
10 basis for the request is that as we have talked to
11 the City and talked to the County it has become
12 apparent that it is going to take longer to pave
13 the necessary roads than previously anticipated.

14 In light of that, the reason that we
15 proposed the condition as we did is that as we
16 understand it, staff is looking at the road paving
17 to satisfy two requirements. One is CEQA
18 mitigation of construction emissions and the other
19 is new source review offsets.

20 The construction-related PM10 is the
21 18.1 ton per year figure. And we believe that we
22 can get sufficient roads paved prior to
23 commencement of construction to offset 18.1 tons.
24 And therefore in our view the construction-related
25 emissions would be mitigated prior to commencement

1 of construction.

2 With respect to the remainder, which
3 make up the remainder of the new source review
4 emission offsets, both the local district rules
5 and the EPA rules don't require that those offsets
6 be in place until commencement of operation. And
7 so our view was that having them in place six
8 months after commencement of construction was
9 significantly more aggressive than what either the
10 federal or the local air district rules required
11 and was therefore reasonable.

12 So in our view the 18.1 tons is in place
13 before construction commences. All of the
14 construction-related emissions are therefore
15 mitigated as of day one. And within six months
16 the new source review offsets come into place,
17 roughly a year to a year-and-a-half earlier than
18 they would otherwise be required under the local
19 rules and the federal EPA regulations.

20 HEARING OFFICER RENAUD: Of the entire
21 amount of road paving how much would be complete
22 to cover the 18.1 tons? What percentage, say?
23 Roughly, if you know.

24 MR. CARROLL: In terms of -- In terms of
25 miles?

1 HEARING OFFICER RENAUD: Miles,
2 percentage, whatever you might know.

3 MR. CARROLL: Well the total obligation
4 is approximate 124 tons per year, I believe.

5 HEARING OFFICER RENAUD: I see.

6 MR. CARROLL: So 18 tons is --

7 HEARING OFFICER RENAUD: So it is
8 something between 10 and 20 percent.

9 MR. CARROLL: Correct. That represents
10 the entirety of the construction-related
11 emissions.

12 HEARING OFFICER RENAUD: Staff.

13 MS. SMITH: May I interject?

14 HEARING OFFICER RENAUD: Pardon me?

15 MS. SMITH: I would like to interject.

16 HEARING OFFICER RENAUD: Please. On
17 behalf of CURE, yes.

18 MS. SMITH: This in part goes to the
19 comments that I was going to make but the hearing
20 has been a little ahead of what I was going to
21 say. The controlling federal law here is the
22 State Implementation Plan. Rule 1302 adopted by
23 the air district and EPA is the prevailing federal
24 law here. It says that all offsets must be in
25 place before commencement of construction. That

1 is the federal law and the state law.

2 And going to something that Commissioner
3 Boyd had said at our last hearing. No, actually
4 in the PMPD. That the Clean Air Act itself
5 controlled, and you cited to a provision that said
6 that the offsets were not necessary until
7 commencement of operations. That is the less
8 stringent -- yes, operations. That is the less
9 stringent standard. And the SIP is prevailing
10 because it is more stringent and it is the more
11 particular. So that is the controlling federal
12 law.

13 HEARING OFFICER RENAUD: Ms. Holmes,
14 would you like to respond here?

15 MS. HOLMES: As I said before, the staff
16 is concerned that the offsets be provided prior to
17 construction. We think that is a conservative
18 approach. It assures that the offsets will be
19 available. It assures that all of the impacts are
20 mitigated.

21 In this case in particular they are
22 talking about a relatively small percentage that
23 they would like to get of PM10 emissions, a
24 relative small percentage of the total prior to
25 construction. We think that it is a much more

1 prudent approach to require that all of the
2 offsets be provided prior to, prior to
3 construction as opposed to phasing it out.

4 We are also concerned, quite frankly,
5 about the precedent of having offsets due in
6 various increments over time. We think that is a
7 dangerous, a dangerous trend.

8 HEARING OFFICER RENAUD: Mr. Carroll,
9 what is the problem with getting the paving done
10 before construction?

11 MR. CARROLL: It just is a physical
12 matter. It takes more time than we had
13 anticipated to get the roads paved. We are
14 dealing not only with the City, which as the
15 applicant is a little bit easier to deal with, but
16 we are also dealing with the County.

17 Because some of the roads that are being
18 paved are in the county and we obviously don't
19 have the ability to streamline the approval
20 process at the County the way that we do at the
21 City. And so it is just a practical matter of
22 getting approval, agreement as to the standards to
23 which the roads will be paved, and then physically
24 getting out and paving the roads.

25 With respect to the incrementalism. We

1 proposed that because, again, we thought that part
2 of the goal here was to offset the construction
3 emissions. So we didn't propose the
4 incrementalism to set any dangerous precedent but
5 we thought that that would be appealing to staff
6 because they would know that the construction
7 emissions were offset as of the commencement of
8 construction.

9 I'll just say, as a practical matter, if
10 we are unable to achieve relief, we are delaying
11 the commencement of construction by at least six
12 months on the project. And that's why we are
13 pressing this issue as hard as we are.

14 PRESIDING MEMBER BOYD: I'm concerned
15 about the rule of law question that was put out on
16 the table by CURE.

17 MS. HOLMES: It is my understanding that
18 the district rule does require emission reduction
19 credits to be provided prior to the commencement
20 of construction. And that's something that we did
21 not, we did not directly brief. But it did come
22 up in the discussion that we had earlier.

23 MS. SMITH: Can I say a little more on
24 this subject? I would just like to go ahead and
25 give my comments because they 100 percent address

1 the issue we are talking about.

2 HEARING OFFICER RENAUD: You're in this
3 particular area. Yes you are, I agree.

4 MS. SMITH: Thank you.

5 HEARING OFFICER RENAUD: Go ahead.

6 MS. SMITH: Thank you. And may I
7 approach? I actually have some handouts that may
8 be helpful.

9 HEARING OFFICER RENAUD: Please.

10 MS. SMITH: Thank you. I think the
11 first page of the handout is the Warren-Alquist,
12 the relevant part of the Warren-Alquist Act
13 itself. Which under the Warren-Alquist Act the
14 Commission must require as a condition of
15 certification that the applicant obtain emission
16 offsets that are consistent with federal law.

17 At this moment the Victorville 2 offset
18 plant does not comply with federal law.

19 But the PMPD made an air quality finding
20 that the project's use of ERCs was consistent with
21 applicable federal and state emission control
22 strategies. It appears to us that the PMPD
23 focused on the fact that the EPA in the future may
24 approve Air District Rule 1406, which would allow
25 facilities to create offsets by paving unpaved

1 roads anywhere within the Mojave air basin.

2 However, the Commission cannot make a
3 finding that the project's offset plan currently
4 complies with federal law. This is because the
5 applicable federal law is a state implementation
6 plan. Which is the second page of my handout and
7 what we were just talking about, Rule 1302.

8 The SIP currently does not allow for
9 road paving offsets and will not until Rule 1406
10 is approved by EPA. The only relevant provision
11 in the SIP that applies here is 1302, which
12 requires the City to surrender its offsets to the
13 District prior to beginning project construction.

14 So at this moment the project doesn't
15 comply with federal law. In fact, it is
16 impossible for EPA to approve the road paving rule
17 before you meet to approve the project on July 16.
18 Because once EPA approves its rule, its review of
19 the rule, it then has to put it out for public
20 comment for a minimum of 30 days.

21 If the Commission certifies the project
22 29 days from today there is no way the Commission
23 will be able to make a finding that the
24 applicant's road paving offsets conform with
25 federal law.

1 Rather than deal directly with that fact
2 the PMPD cited the Clean Air Act for the
3 proposition that offsets are not required until a
4 project begins operations. And that is what I
5 just spoke about a moment ago. That provision in
6 the Federal Clean Air Act is the less-stringent.
7 There's copious federal case law on the fact that
8 a SIP controls in a situation like this.

9 The only way the Commission can certify
10 the project on July 16 is for it to conclude a
11 condition in the license that the City obtain
12 federally enforceable offsets and surrender those
13 offsets to the District prior to construction and
14 consistent with SIP Rule 1302.

15 The last, the third piece of paper in
16 your handout is a proposed condition that would
17 satisfy federal law and allow the project to go
18 forward.

19 HEARING OFFICER RENAUD: All right,
20 thank you.

21 MS. SMITH: Thank you.

22 HEARING OFFICER RENAUD: Would either
23 applicant or staff like to comment or respond?

24 MR. CARROLL: Let me respond. There are
25 a couple of things in what was just stated. Part

1 of what was just stated is what federal law
2 requires. That issue was fully briefed for the
3 Committee previously so I am not going to go back
4 over that again.

5 The second question is, what do the
6 District rules require. What the District rules
7 require is that the emission offset package be
8 identified at the time that the permits to
9 construct are issued and be in place prior to
10 commencement of operation.

11 So whether we are looking to federal
12 law, which very clearly requires in the Clean Air
13 Act that the offsets be in place prior to
14 commencement of operation, or whether we are
15 looking at the District rules and arguing that the
16 District rules constitute federal law because they
17 are approved into the SIP. In either case it is
18 permissible for the offsets to not be in place
19 until commencement of operation.

20 HEARING OFFICER RENAUD: Can you cite us
21 to that District rule?

22 MR. CARROLL: I am just looking to see
23 if that particular rule was covered in what CURE
24 submitted. I do not have a cite with me at the
25 moment. But I can certainly get one prior to the

1 conclusion of the hearing today and provide it to
2 you.

3 HEARING OFFICER RENAUD: That would be
4 great.

5 MR. CARROLL: Okay.

6 HEARING OFFICER RENAUD: Or if not by
7 the end of the hearing, sometime in the next day
8 or two and send it to everybody.

9 MR. CARROLL: Okay.

10 HEARING OFFICER RENAUD: All right.
11 Anything else on that, Mr. Carroll? Anything
12 else?

13 MR. CARROLL: No, nothing further.

14 HEARING OFFICER RENAUD: All right,
15 thank you.

16 Ms. Holmes, anything?

17 MS. HOLMES: I think it was our
18 understanding, based on our reading of Rule 1302,
19 that the offsets were going to be provided prior
20 to construction. I would take, I would take issue
21 with Ms. Smith's characterization that the
22 Commission cannot license the project.

23 But based on the information I have, and
24 I will be honest with you, I have not looked at
25 this issue in depth. I believe the Commission

1 could license the project. But I believe that the
2 decision as it is written requires that they
3 obtain enforceable -- or should obtain enforceable
4 offsets prior to construction.

5 So in other words, it is not that the
6 project can't be licensed. The project could be
7 licensed but they can't begin construction until
8 the offsets are provided.

9 MS. SMITH: I don't think that is
10 necessarily inconsistent with what we're saying.

11 MS. HOLMES: Again, I interpreted your
12 comments to say that we couldn't move forward and
13 license. And I believe that we can consistent
14 with the requirements in 25523(d)(2). But I do
15 believe that there needs to be a requirement that
16 the offsets are obtained prior to construction.

17 MS. SMITH: Which I think is exactly
18 what our proposed condition goes, intended to go
19 to.

20 HEARING OFFICER RENAUD: And by offsets,
21 Ms. Holmes, do you mean that the road paving be
22 completed or do you mean that the road offsets be
23 identified? Or something else?

24 MS. HOLMES: Our proposed AQSC-9
25 required them to be -- requires them to be paved.

1 HEARING OFFICER RENAUD: All right, very
2 good. Commissioners, anybody, questions? All
3 right.

4 Well, you are obviously not coming to
5 any agreement on this. And I think the way we'll
6 leave it, unless I hear news from you in the
7 future, is that the Committee will decide this and
8 include it in the Final Decision.

9 Okay, let's move on then. I think we
10 are done with Air Quality. Does anybody have
11 anything else to point out on Air Quality before
12 we move on to another topic? I think that is all
13 I had.

14 MR. CARROLL: I guess just a point of
15 clarification. Does that mean then that each of
16 the other items identified by applicants under Air
17 Quality are agreed to and will be reflected in the
18 Final Decision?

19 HEARING OFFICER RENAUD: Yes, yes.

20 MR. CARROLL: Okay.

21 HEARING OFFICER RENAUD: As well as
22 yours.

23 MS. HOLMES: I believe that all of the
24 modifications are consistent.

25 MR. CARROLL: I believe that's -- yes,

1 that is right.

2 HEARING OFFICER RENAUD: That was my
3 reading of it too.

4 MR. CARROLL: That is correct.

5 HEARING OFFICER RENAUD: Was that you
6 were both pointing out the same things in the same
7 key. Yes.

8 Okay, I am being informed we have some
9 people on the phone who will want to speak and I
10 will let you know, callers, when it is your turn.

11 Okay, let's move on then to -- I am
12 going to save Biology for last. I'll tell you
13 that first, right now.

14 Let's move on to Hazardous Materials
15 Management. Well actually no, let's get a small
16 one out of the way. General Conditions of
17 Certification modification to GEN-1 to change the
18 applicable California Building Code for the
19 General Electric equipment to the 2001 code. You
20 both appear to be in agreement on that and we will
21 change the condition to reflect that.

22 MS. HOLMES: That is correct.

23 HEARING OFFICER RENAUD: Good.

24 MR. CARROLL: Yes.

25 HEARING OFFICER RENAUD: All right. All

1 right, Hazardous Materials Management. This is
2 page five of the applicant's comments.

3 MS. HOLMES: Page 13 of staff's?

4 HEARING OFFICER RENAUD: As far as I can
5 tell you both were in agreement with respect to
6 your comments.

7 MR. CARROLL: That's correct.

8 MS. HOLMES: We are. Except we had an
9 additional comment, I believe. We are referencing
10 attachments A, B and C.

11 HEARING OFFICER RENAUD: That's right.
12 And we will include those in the Final Decision,
13 thank you. All right.

14 Okay, Soil and Water Resources. It
15 looks like again with respect to your comments you
16 are in agreement. Applicant has made a couple of
17 new requests. Let's just run through those and
18 see if they are acceptable to the staff. These
19 primarily pertain to deadlines again, or time
20 limits.

21 I am looking at page seven of the
22 applicant's comments under Roman V-b. Number one
23 is a request to change the compliance due date,
24 which is currently 90 days prior to site
25 mobilization. And then 60 days prior to site

1 mobilization is two. Sixty days prior to
2 commencement of construction and 30 days prior to
3 commencement of construction. Is that okay with
4 the staff?

5 MS. HOLMES: I am going to have
6 Ms. Ellie Townsend-Hough respond to this because I
7 did not get the opportunity to talk to her before
8 today's hearing. So she will be responding to the
9 Committee directly.

10 HEARING OFFICER RENAUD: Okay, very
11 good. Let's see. Should we have the witness
12 sworn?

13 MS. HOLMES: If you would like to.

14 HEARING OFFICER RENAUD: I think so.
15 Yes, please.
16 Whereupon,

17 ELLIE TOWNSEND-HOUGH
18 Was duly sworn.

19 HEARING OFFICER RENAUD: Please state
20 your name.

21 MS. TOWNSEND-HOUGH: My name is Ellie
22 Townsend-Hough, H-O-U-G-H.

23 HEARING OFFICER RENAUD: Thank you.

24 MS. HOLMES: Ellie, do you want to just
25 march through the comments, starting with the

1 request for a change on Soil and Water-2.

2 HEARING OFFICER RENAUD: All right.

3 Just to sum up, the applicant has asked for a
4 relaxing, for shorter deadlines within which to
5 submit a copy of the DESP -- DESCP. We are
6 interested in hearing what impact that might have
7 on the environmental aspects of the project.

8 MS. TOWNSEND-HOUGH: Basically if you
9 look at the Drainage Erosion Sedimentation Control
10 Plan, that is what that acronym stands for. It is
11 going to be very tight on the schedule. So once
12 we get down to construction time it could cause a
13 delay. You realize that.

14 MR. CARROLL: Yes. Yes.

15 MS. TOWNSEND-HOUGH: Okay. Because --

16 MR. CARROLL: What you are suggesting is
17 that given the time frames that we have requested
18 it may not be possible for the staff to approve
19 the plan prior to construction.

20 MS. TOWNSEND-HOUGH: Especially with the
21 number of applications. I think if you want to
22 guarantee your commencement of construction I
23 would stay with the site mobilization date on 2, 4
24 and 5.

25 MR. CARROLL: I think we recognize that

1 there is a risk that we will have a delay in the
2 commencement of construction. But as currently
3 written we know that there will be a delay in the
4 commencement of construction because we won't be
5 able to get the plans in on time.

6 So I think our preference would be to go
7 with what we proposed, recognizing what you have
8 said. Which is that that may not provide staff
9 sufficient time to review and approve and we may
10 end up with delay at that point.

11 MS. HOLMES: I would just like to offer
12 a comment here at this point. I think everyone
13 understands that this project is operating under
14 some time constraints. But it seems to me what
15 this is doing is shifting the onus to staff to
16 shorten its review time as opposed to the
17 applicant to get the plans together.

18 There's nothing that could have
19 prevented the applicant from beginning this work
20 already. And we are concerned about the number of
21 requests shrinking the review time, particularly
22 given the staff workload issue we have right now.

23 It is ironic in some ways. Staff works
24 very, very diligently to get projects licensed but
25 that also means that there's -- in an expeditious

1 way. It also means that there is less time
2 available for the staff to review, to review the
3 compliance submittals as they come in. And that
4 is the reason why you get these long time frames.

5 And as I said, we have encouraged many
6 applicants, including I believe this one, to begin
7 preparing their plans prior to completing the
8 licensing process so that we don't run into time
9 constraints at the end. So I think that --

10 As I said, my biggest concern is what
11 this is doing is shifting yet another burden to
12 the staff to hurry up and get something done
13 quickly at a time when it is, quite frankly, going
14 to be very difficult to do.

15 HEARING OFFICER RENAUD: What I think I
16 am hearing Mr. Carroll say, though, is that he is
17 willing -- he can't get the documents in at the
18 current time frames and he is willing to accept
19 the consequences of submitting them later, which
20 may delay construction. Am I misunderstanding
21 what you are saying, Mr. Carroll, or is that
22 correct?

23 MR. CARROLL: No, you are correct. And
24 let me assure the Committee that we do have this
25 work underway. In part it is because we have this

1 work underway as far as we do that we recognize
2 that the current deadlines are going to be
3 impossible to meet.

4 And I am sympathetic to what Ms. Holmes
5 is saying. But again, we are willing to take on
6 that risk and to try to do as complete and
7 comprehensive a job as we can on these plans so
8 that we can minimize that risk. But we recognize
9 that that is a risk that we have.

10 MS. HOLMES: Then I would hope that when
11 staff cannot meet the deadlines that the applicant
12 is asking for we don't hear that staff is delaying
13 construction of the project.

14 PRESIDING MEMBER BOYD: I was going to
15 say something like that. Then I presume,
16 Mr. Carroll, won't be before the full Commission,
17 as some attorneys have been of late, complaining
18 about the time it takes for staff to process.

19 Because I'm sympathetic. If you are
20 willing to take the risk I'm leaning in that
21 direction. But I agree with Ms. Holmes, it's a
22 Catch-22 there a little bit.

23 MR. CARROLL: Well I think the record I
24 have created today would make it difficult for me
25 to come back.

1 (Laughter)

2 PRESIDING MEMBER BOYD: I would agree
3 with that.

4 MS. TOWNSEND-HOUGH: Okay. And if we
5 look at -- So basically we'll go with the same
6 deadlines on 4, Condition of Certification 5. So
7 that's 2, 4 and 5.

8 HEARING OFFICER RENAUD: We'll go with
9 the applicant's request to change those deadlines,
10 with the understanding that they may result in --

11 MS. TOWNSEND-HOUGH: Project delay.

12 HEARING OFFICER RENAUD: -- delay of
13 construction. But that is the risk they are
14 willing to take. All right.

15 MS. TOWNSEND-HOUGH: Okay. Now on Soil
16 and Water-9. I have to refer back to the Final
17 Staff Assessment. I believe we talked -- and I
18 couldn't find the e-mail that we had. But if you
19 look at -- I don't know if you have the Final
20 Staff Assessment.

21 HEARING OFFICER RENAUD: I have a copy
22 of the FSA if you need it, if anybody needs one.

23 MS. TOWNSEND-HOUGH: Okay. I am looking
24 at page 4.9-20 under Waste Water.

25 MS. HOLMES: Mr. Carroll, would you like

1 a copy of that?

2 MR. CARROLL: If you have an extra copy
3 that would be ideal.

4 MS. SMITH: You can use mine.

5 MR. CARROLL: No, I think it's the FSA
6 that they are referring to.

7 MS. SMITH: I'm sorry.

8 MR. CARROLL: But thanks. Thanks.

9 MS. TOWNSEND-HOUGH: Okay. So on Soil
10 and Water number 9. This does not refer to
11 operation, this refers to construction. So having
12 a zero-liquid discharge system wouldn't actually
13 eliminate this constraint. I believe we talked
14 early on in terms of what were the discharge
15 requirements for the waste water.

16 MS. HOLMES: Let me just clarify, step
17 in here for a moment. What Townsend-Hough is
18 referring to in the FSA is a reference to there
19 being waste water discharge during construction of
20 the facility. Just so that everybody is clear
21 about that.

22 MS. TOWNSEND-HOUGH: Not the operation.

23 HEARING OFFICER RENAUD: Right. And the
24 condition is about a discharge permit.

25 MS. TOWNSEND-HOUGH: Right.

1 HEARING OFFICER RENAUD: And the
2 applicant is pointing out that there will be a
3 zero-liquid discharge system so why do they need
4 one.

5 MS. TOWNSEND-HOUGH: But that is during
6 operation.

7 MS. HOLMES: That's during operation.

8 HEARING OFFICER RENAUD: That's during
9 operation, right. So during construction there
10 will be discharge. That all sounds good but I
11 would like to hear from Mr. Carroll about that.

12 MR. CARROLL: First of all, we had
13 understood this to apply to operations as opposed
14 to construction so that's the first, that's a
15 helpful clarification that you have made.

16 I guess, and I don't have our technical
17 experts here. Could we add some, if required,
18 language. Because I guess I am not absolutely
19 certain that we need an industrial waste water
20 discharge permit during construction. If we do,
21 obviously we'll get it. But can we add some, if
22 required, language.

23 MS. TOWNSEND-HOUGH: If required, is
24 fine.

25 MR. CARROLL: Okay, okay.

1 MS. TOWNSEND-HOUGH: Because I talked
2 to, I talked to VVWRA, and I can't remember the
3 whole acronym right now.

4 MR. CARROLL: Right, right.

5 MS. TOWNSEND-HOUGH: But I talked to
6 them. And I believe I talked to one of your
7 technical experts to discuss the waste discharge
8 requirement for the waste water.

9 MR. CARROLL: Okay. And I know there
10 have been discussions. And we had had a
11 conversation with VVWRA as well, which is what led
12 us to the conclusion that we didn't need this. So
13 there appears to be some confusion. I think if we
14 add some, if required, language we can sort it
15 out.

16 MS. HOLMES: I think that's an excellent
17 idea.

18 HEARING OFFICER RENAUD: We can do that.
19 But let me point out that the Soil and Water-9
20 already says, as applicable for construction. If
21 it turns out it is not applicable for construction
22 I would say you're covered. But if you would like
23 to add the additional clarification.

24 MS. HOLMES: If needed they would be
25 applicable.

1 HEARING OFFICER RENAUD: Belt and
2 suspenders. We'll do it, it's no big deal.

3 MR. CARROLL: I think with that
4 clarification we're fine with it as proposed. I
5 think you're right, it does have the, if required,
6 concept in there.

7 HEARING OFFICER RENAUD: Yes, both the
8 condition and the verification are conditioned on,
9 as applicable for construction. If it turns out
10 it is not applicable for construction then we're
11 okay. All right.

12 MR. CARROLL: I think we're fine on
13 that.

14 HEARING OFFICER RENAUD: So we'll move
15 on from there. Thank you.

16 All right. Now on Cultural Resources.
17 And I am looking at page eight of the applicant's
18 comments. Applicant has requested, again, some
19 changes in due dates. Condition of Certification
20 CUL-1. The current compliance deadline is 45 days
21 prior to start of ground-disturbance and the
22 applicant requests it be changed to 30 days prior
23 to ground-disturbance. Does the staff have a
24 position on that?

25 MS. HOLMES: Let me check my notes here.

1 HEARING OFFICER RENAUD: And that's on
2 page 240 of the PMPD if anybody wants to look.

3 MS. HOLMES: This is for CUL-1?

4 HEARING OFFICER RENAUD: Yes.

5 MS. HOLMES: Again, staff would oppose
6 on the grounds similar to those that we heard in
7 the earlier discussion. The fact that they are
8 finding it very difficult to shorten time frames
9 for compliance items when there is such a heavy
10 workload going on with respect to the siting
11 cases.

12 HEARING OFFICER RENAUD: Mr. Carroll?

13 MR. CARROLL: That's fine. We'll stick
14 with the staff proposal on this one.

15 HEARING OFFICER RENAUD: All right.

16 On CUL-2 we have another -- I'm sorry,
17 thank you, you're right. Okay, I'm sorry, CUL-10.
18 Okay. CUL-10 requires that the applicant submit a
19 Cultural Resources Treatment Plan at least 60 days
20 prior to the start of construction-related ground-
21 disturbance, within 100 feet around and inclusive
22 of those areas not previously surveyed for
23 cultural resources. And applicant is requesting
24 that the compliance submittal due date be changed
25 to 30 days.

1 MS. HOLMES: That change is acceptable.

2 HEARING OFFICER RENAUD: Okay, that's
3 what we'll do. All right.

4 And now this appears to be somewhat of a
5 conflict in the evidence being pointed out by the
6 applicant. Additional Matters item 1, page nine,
7 under Cultural. The PMPD currently states that
8 approximately ten miles of this line, which is a
9 historic transmission line, would be used as
10 segment three of the project transmission line.

11 And the applicant states that 6.6 miles
12 of this line would be relocated elsewhere in the
13 same right of way but the project will not use the
14 historic line.

15 The language in the PMPD basically comes
16 from the FSA, but Exhibit 32 submitted by the
17 applicant reflects Mr. Carroll's suggested change
18 here. And I am not, I am not sure which way to go
19 on that. Ms. Holmes, do you have a --

20 MS. HOLMES: I have a third option.

21 HEARING OFFICER RENAUD: All right,
22 let's hear that.

23 MS. HOLMES: Staff drafted proposed
24 language that would modify the discussion on page
25 231, after the sentence: The line is still in use

1 and is located approximately three miles west of
2 the proposed Victorville 2 power plant location.

3 There would be new language that said:
4 While the original line will be located within the
5 same right-of-way, approximately ten miles of the
6 original route of this line will be used as
7 segment three.

8 And I think that, I think that brings
9 the two pieces together.

10 MR. CARROLL: I would agree.

11 HEARING OFFICER RENAUD: Fine, thank
12 you.

13 Now on Geological and Paleontological
14 Resources the applicant has requested a deadline
15 change. Currently under PAL-1 the date for
16 submission of the r, sum, of the designated PRS,
17 that's the paleontological resources specialist,
18 be submitted to the CPM 60 days prior to the start
19 of ground-disturbance.

20 Applicant is requesting that it be
21 changed to 30 days prior to site mobilization.
22 Staff?

23 MS. HOLMES: The change is acceptable to
24 staff.

25 HEARING OFFICER RENAUD: Okay. Good.

1 All right.

2 Now let's move on to applicant's
3 comments on Land Use, page nine of applicant's
4 comments. Applicant is requesting a change to
5 Condition of Certification LAND-2. It has to do
6 with adjusting the boundaries of the various
7 parcels that constitute or that will make up the
8 project sites in order to turn it all into a
9 single parcel. And the applicant is requesting a
10 change to Condition of Certification LAND-2.
11 Actually two changes. Does the staff wish to
12 comment on that?

13 MS. HOLMES: Yes. We are not quite
14 certain exactly what the applicant intends with
15 that. To the extent that what they are asking for
16 is permission to proceed without having site
17 control, staff would object to that. I have the
18 staff witness in Land Use, David Flores, available
19 if the Committee wants further explanation of the
20 staff position.

21 HEARING OFFICER RENAUD: It strikes me
22 maybe it would be helpful to hear Mr. Carroll sum
23 up what they want and then we will hear from the
24 witness.

25 MR. CARROLL: Yes. We are not proposing

1 to proceed with construction absent site control.
2 Let me provide just a little bit of background.
3 This requirement relates to a relatively new
4 requirement in the Appendix B requirements that
5 there be essentially a plan in place to merge
6 various parcels into a single parcel for the
7 project site. So I think this is a relatively new
8 issue for the Commission.

9 The situation that we have in this
10 particular project is we have literally hundreds
11 of parcels. The land that covers the project site
12 was subdivided. And keep in mind that we have 250
13 acres for the solar field. It was subdivided into
14 five acre parcels, some of which were given away
15 to people with newspaper subscriptions. And so we
16 have had a very difficult time tracking down all
17 of the owners to acquire the parcels.

18 We are in the process of doing that. We
19 have a couple of holdouts. Other people that we
20 cannot find. Or people that we have found that
21 have not agreed to sell their property and so the
22 City is proceeding with eminent domain proceedings
23 to acquire those holdout parcels.

24 Because of the timing associated with
25 the eminent domain proceedings, which we can't

1 commence until we have our CEC certification in
2 place, we are having difficulty merging everything
3 into a single parcel prior to the commencement of
4 construction.

5 So what we are proposing is that we
6 would have control over the parcels in the form of
7 a right of ownership in the eminent domain. And
8 then we would proceed with the parcel merger
9 process subsequent to the commencement of
10 construction.

11 HEARING OFFICER RENAUD: All right,
12 thank you.

13 MS. HOLMES: May I ask a question? I am
14 a little bit confused about the sequence of
15 events. I think I am hearing you say that you are
16 not going to begin the eminent domain proceedings
17 until there is an Energy Commission certification.
18 Is that correct?

19 MR. CARROLL: We can't commence them
20 proper until there's an Energy Commission
21 decision. Now we have commenced all of the
22 preliminary work in terms of appraising of the
23 properties so that as soon as we have a CEC
24 decision we can commence the eminent domain
25 proceedings proper. But with the eminent domain

1 law we are not allowed to proceed with the eminent
2 domain until we have the decision in place.

3 MS. HOLMES: And how long -- I guess
4 what I am curious about is how long it is going to
5 take to complete the eminent domain proceedings?
6 What we are concerned about is site control. So
7 I'm wondering, if the Commission decision is
8 planned for mid-July, how long after that could we
9 reasonably expect the eminent domain proceedings
10 to be completed?

11 MR. CARROLL: We expect the eminent
12 domain proceedings to be completed just about the
13 time that we are scheduled to commence
14 construction. And so the eminent domain
15 proceedings would be completed but then we would
16 still need to go through the parcel merger
17 process.

18 MR. FLORES: It's just that the language
19 that we used --

20 THE REPORTER: Please identify yourself
21 for the record.

22 MR. FLORES: David Flores.

23 MS. HOLMES: Mr. Flores was the staff's
24 witness for Land Use for this proceeding.

25 HEARING OFFICER RENAUD: Yes, go ahead.

1 MR. FLORES: This is standard language
2 that we use for merger of parcels. And we have
3 had other proceedings, other projects, which
4 required merger of parcels. I guess I'm concerned
5 with the language the way it has been submitted as
6 to the -- regarding the language of fee ownership.

7 MR. CARROLL: Right.

8 MR. FLORES: And I guess I am still
9 confused as to how this will all come together.

10 MR. CARROLL: Sure. Well let me try to
11 explain it again. And we are certainly willing to
12 work on the language. But the idea is that once
13 we have our Commission decision in place we would
14 be able to commence the eminent domain proceedings
15 in proper.

16 We expect that 30 days prior to
17 commencement of construction those proceedings
18 would have been completed. So at that point we
19 will either have fee ownership of the parcels. Or
20 with respect to those for which we do not yet have
21 fee ownership, we will have legal possession of
22 the parcels.

23 And we would continue the eminent domain
24 process to obtain fee ownership and merge the
25 parcels. All of which we would expect to have

1 happen within the time frames that we proposed.

2 MR. FLORES: So the merger of parcels
3 will be completed, the map and everything, prior
4 to construction. Is that correct? I guess that's
5 what I'm looking for. Is that you're saying --

6 MS. HOLMES: No, I think he's saying 30
7 days after they acquire is when the merger. Is
8 your commencement of construction date September
9 1st? Is that correct?

10 MR. CARROLL: It is November 1st.

11 MS. HOLMES: November 1st.

12 MR. CARROLL: Mobilization date is
13 September 2nd, commencement of construction
14 November 1st.

15 MS. HOLMES: So as I understand it you
16 would, once you get the Commission decision you
17 would initiate the formal portion of the eminent
18 domain proceedings.

19 MR. CARROLL: Right.

20 MS. HOLMES: You're thinking that that
21 can be completed within two-and-a-half months.

22 MR. CARROLL: Correct.

23 MS. HOLMES: And so under those
24 circumstances you would begin construction after
25 you had obtained legal title to the property. And

1 30 days from when you obtain legal to the property
2 you would complete the merger. So the merger
3 would happen somewhere no later than 30 days after
4 the commencement of construction.

5 The merger would occur no later than 30
6 days after construction since you would not be
7 beginning construction until you had fee title.
8 And you are estimating that it will take 30 days
9 from the time that you have fee title to merger.

10 MR. CARROLL: Yes, that's correct.

11 MR. FLORES: That's fine. I'm always
12 concerned regarding construction occurring,
13 especially when you build over property lines that
14 are currently out there now. Since you have these
15 30-plus parcels that you are securing. So from a
16 building requirement there are certain
17 requirements under the Building Code which
18 essentially are not to build over property lines
19 or structures. And so that's why you have the
20 merger of parcels to merge everything so you have
21 essentially one parcel to build on. So that was
22 essentially my concern.

23 HEARING OFFICER RENAUD: Well as written
24 the condition says basically that the project
25 owner shall adjust the boundaries, et cetera, as

1 necessary to merge all properties into a single
2 parcel under single ownership.

3 The proposed change is that the owner
4 shall adjust the boundaries of all parcels, et
5 cetera, as necessary to effectuate all properties
6 becoming a single parcel.

7 I think, Mr. Carroll, what you were
8 trying to do there was to change it so that you
9 didn't necessarily have to be completely -- the
10 merger didn't have to be completed but it was on
11 its way.

12 MR. CARROLL: Correct.

13 HEARING OFFICER RENAUD: Do we want to
14 work on this language?

15 MS. HOLMES: I would feel a little bit
16 more comfortable if we also had language in there
17 saying that the merger process had begun. As well
18 as not only have the applicant obtain fee title
19 but the merger process was underway.

20 HEARING OFFICER RENAUD: Effectuate is a
21 little bit vague in my view.

22 MR. FLORES: We have a concern regarding
23 that word.

24 HEARING OFFICER RENAUD: All right. It
25 sounds to me like you should be able to work out

1 language that everybody can live with here. Can
2 we leave it at that and you will submit it to
3 everybody?

4 MR. CARROLL: That's fine.

5 HEARING OFFICER RENAUD: All right. And
6 then also on LAND-2.

7 MR. CARROLL: These are interrelated.
8 We separated our comments on the condition and the
9 verification just in case we needed to treat them
10 separately but they are all interrelated.

11 HEARING OFFICER RENAUD: All right, so
12 we'll leave that to be worked out as well. Good.

13 All right, let's look at applicant's
14 comments on Traffic. Both applicant and staff's
15 comments on Traffic and Transportation. First is
16 the matter of the FAA determination.

17 Staff has requested that the phrase:
18 "With the condition that no project structure
19 exceeds 145 feet above ground level" to be added
20 to a finding in conclusion five. I think that
21 looks fine.

22 As far as the Condition of Certification
23 TRANS-5. It requires issuance of the FAA
24 Determination of No Hazard. That has apparently
25 been issued.

1 MS. HOLMES: It is my understanding that
2 TRANS-5 is no longer needed because all of the FAA
3 determinations have been provided and have been
4 docketed.

5 HEARING OFFICER RENAUD: That's why I
6 wrote moot, question mark, on my notes. So we
7 will just get rid of that one. Does that sound --

8 MS. HOLMES: Yes.

9 HEARING OFFICER RENAUD: Okay.

10 MR. CARROLL: That's fine.

11 HEARING OFFICER RENAUD: All right,
12 good. Okay. And then the applicant is requesting
13 a deadline change on TRANS-2 to submit a post-
14 construction roadway mitigation plan 90 days prior
15 to site mobilization is what it currently says.
16 They would like to change it to 60 days prior to
17 site mobilization.

18 MS. HOLMES: Staff has the same general
19 concern about workload. We would prefer that it
20 be kept at 90 days.

21 HEARING OFFICER RENAUD: What do you
22 think, Mr. Carroll?

23 MR. CARROLL: Well, I guess I would just
24 point out on this one. This relates to
25 restoration of the roads post-construction. So it

1 is not a condition that comes into play for a
2 year-and-a-half to two years. And we are
3 obviously very focused on getting in the
4 submissions that must be in place prior to
5 commencement of construction.

6 This is one that seems like it could
7 very easily be put off and give both the applicant
8 and the staff time to focus on what really needs
9 to be there.

10 MS. HOLMES: Assuming that we are not in
11 the same workload situation two years from now
12 that we are in now. I think that staff's position
13 is not as strong on this item as it is on some of
14 the others. But we do have that general concern
15 about workload.

16 HEARING OFFICER RENAUD: Well, I think
17 we have heard from Mr. Carroll. And I think I am
18 safe in saying this is generally true that
19 wherever the applicant is asking for a relaxation
20 of deadlines they are willing to take the risk
21 that that may push some other dates along as well.
22 And that is just a risk that is going to go with
23 this, right? Correct?

24 HEARING OFFICER RENAUD: That's fine,
25 although I don't believe this one requires a staff

1 approval. But I agree and we do accept that risk.

2 HEARING OFFICER RENAUD: Okay, so we'll
3 change that to 60 days.

4 PRESIDING MEMBER BOYD: I guess I
5 wouldn't call it a relaxation, rather an
6 acceleration. But in any event.

7 HEARING OFFICER RENAUD: Well, yes, you
8 could characterize it that way. Give the
9 applicant more time.

10 PRESIDING MEMBER BOYD: Less time.

11 HEARING OFFICER RENAUD: All right,
12 let's do Transmission System Engineering here. We
13 need to have an exhibit admitted, which didn't
14 exist or at least we didn't have as of the time of
15 the evidentiary hearing. And that is the
16 Independent System Operator's Interconnection
17 Facility Study Report, which we now have. It is
18 dated May 6, 2008 and we saw it added to the
19 docket on June 10.

20 And it consists of a cover letter from
21 Cal-ISO to Tom Barnett of Inland Energy followed
22 by the report itself, which is ten pages long.
23 And we will mark it as Exhibit 218. Do you have a
24 witness to identify this exhibit?

25 MS. HOLMES: I do.

1 HEARING OFFICER RENAUD: All right.

2 MS. HOLMES: Would you identify
3 yourself, please.

4 MR. ARACHCHIGE: Sudanth Arachchige,
5 transmission planning electrical engineer,
6 California Energy Commission. I believe you have
7 been previously sworn.

8 MS. HOLMES: No he has not.

9 HEARING OFFICER RENAUD: You haven't?
10 All right. Well in that case let's do it. Please
11 raise your right hand.
12 Whereupon,

13 SUDANTH ARACHCHIGE
14 Was duly sworn.

15 DIRECT EXAMINATION

16 BY MS. HOLMES:

17 Q Mr. Arachchige, did you prepare the
18 Transmission System Engineering section of the FSA
19 for this proceeding, which has been identified as
20 Exhibit 200?

21 A Yes I did.

22 Q And have you reviewed the document that
23 Mr. Renaud just referred to, the Interconnection
24 Facility Study Report for the Victorville 2
25 project?

1 A Yes I did.

2 Q Does anything in that report change the
3 conclusions in your transmission engineering
4 section of the FSA?

5 A No, nothing else.

6 Q Can you very briefly describe what the
7 Interconnection Facility Study Report is for
8 purposes of the record.

9 A This study provides the specification
10 and process to interconnect the project to the
11 Cal-ISO grid.

12 MS. HOLMES: Thank you. The witness is
13 available for any questions.

14 HEARING OFFICER RENAUD: Does anyone
15 have any questions of the witness?

16 MR. CARROLL: Applicant has no
17 questions.

18 MS. HOLMES: Thank you.

19 HEARING OFFICER RENAUD: Thank you.

20 Okay, I have to go back to Air Quality
21 because I do have one other issue. Both applicant
22 and staff commented on the reevaluation of PM2.5.
23 And the outcome of that reevaluation being
24 basically that 2.5 is not a substantial concern
25 with respect to emissions from the project. And

1 the PMPD will be changed to reflect the new
2 testimony on that.

3 We do have one table in there which has
4 some numbers which may need to be changed. And
5 that is Table AQ-4. It is Exhibit 200 page 4.1-
6 14. And it has numbers in it showing exceedences
7 of the limits for 2.5.

8 MS. HOLMES: I'm sorry, which table?

9 HEARING OFFICER RENAUD: It's AQ-4.
10 Well, in the FSA it was page 4.1-14, in the PMPD
11 it is page 106.

12 Under PM2.5 we have percent of standard
13 going over 100 percent. And if I am understanding
14 things correctly those numbers should, in fact, be
15 below 100 percent.

16 MS. HOLMES: I apologize. Which table
17 in the FSA?

18 HEARING OFFICER RENAUD: It is AQ-6 in
19 the FSA, it is AQ-4 in the PMPD.

20 MS. HOLMES: Thank you, I had them
21 backwards.

22 HEARING OFFICER RENAUD: I'm sorry.

23 MS. HOLMES: I apologize. Yes, it is my
24 understanding that the background numbers for
25 PM2.5 would change and hence the resulting percent

1 of standard numbers would change. But without
2 calling the Air Quality witness back to this room
3 I can't tell you what the correct number is.
4 Would you like somebody to retrieve him?

5 HEARING OFFICER RENAUD: Well I think we
6 have, from the staff's comments and the
7 applicant's comments, sufficient material to show
8 that that's been changed. And in fact we have the
9 supplemental testimony of the air witness from
10 April 2.

11 MS. HOLMES: Right. But I don't believe
12 it gives a numerical value for background.

13 HEARING OFFICER RENAUD: But it didn't
14 have the numbers. It didn't have numbers.

15 MS. HOLMES: Correct.

16 MR. CARROLL: I might point out the
17 numbers are contained in applicant's Prehearing
18 Conference Statement. On page five of that
19 document, paragraph two.

20 MS. HOLMES: Are those the -- Can you
21 please refresh my recollection. Was that the past
22 three years?

23 MR. CARROLL: That's correct. No, I'm
24 sorry, the past two years.

25 MS. HOLMES: The past two years. That's

1 an appropriate figure to use. Staff does not
2 object to that.

3 HEARING OFFICER RENAUD: All right. We
4 will incorporate those numbers from applicant's
5 Prehearing Conference Statement into the PM2.5
6 numbers for Table AQ-4 of the PMPD.

7 MS. HOLMES: Background. But you will
8 have to calculate the percentages yourself.

9 MR. CARROLL: The Prehearing Conference
10 Statement does include the background, the
11 project's contribution, the total and the
12 standards. So I think it has all of the numbers
13 that we have.

14 HEARING OFFICER RENAUD: I think we can
15 manage that, all right. That's the way we'll do
16 it then. All right, good.

17 Did you say that was page five of your
18 statement, Mr. Carroll?

19 MR. CARROLL: Yes. Page five, comment
20 number two under Air Quality.

21 HEARING OFFICER RENAUD: Very good.
22 Thank you, that is helpful.

23 All right, now let me check with our
24 people on the phone. Tonya Moore, are you there?

25 MS. MOORE: Yes.

1 HEARING OFFICER RENAUD: All right. Tim

2 McCormick, are you there?

3 (No response)

4 HEARING OFFICER RENAUD: Debra. Is it

5 Heard?

6 MS. HEAD: Do you mean Sara Head?

7 HEARING OFFICER RENAUD: That's not what

8 it says here. But Sara Head, okay. You're there.

9 MS. HEAD: Yes, thank you.

10 HEARING OFFICER RENAUD: Thank you.

11 MS. HEAD: The only one left.

12 HEARING OFFICER RENAUD: All right,

13 good. Tonya Moore and Sara Head, I believe you

14 are both on Biology; is that correct?

15 MS. HEAD: I tried to explain to the

16 operator we are just here to answer questions if

17 needed. And we were expecting the most discussion

18 on Biology so that's the topic area I mentioned in

19 particular. But I don't have a particular

20 statement to make. I was just, again, here to

21 answer questions.

22 HEARING OFFICER RENAUD: All right, than

23 you. And you are with ENSR, am I correct?

24 MS. HEAD: That is correct.

25 HEARING OFFICER RENAUD: All right.

1 MR. CARROLL: And just to clarify. Sara
2 Head is the project manager with ENSR, which is
3 the applicant's consultant.

4 And the other name. Tim McCormick I
5 believe is Kim McCormick, who is an attorney also
6 representing the applicant with respect to
7 biological resource issues.

8 And so they are available, as Ms. Head
9 indicated, should questions come up on Biological
10 Resources.

11 HEARING OFFICER RENAUD: Very good. And
12 we are on our way to Biology at this point. So we
13 may, we may call on you, we may not, but that's
14 where we are headed.

15 All right. All of the comments of the
16 applicant and the staff on Biological Resources
17 were in indicated agreement except for the matter
18 of -- except for two matters.

19 The simple one is applicant's request to
20 modify proposed condition BIO-6. It's a deadline
21 change which currently calls for 45 days before
22 site mobilization to submit the BRMIMP. To be
23 changed to 60 days prior to commencement of
24 construction. Is that a change that would be
25 acceptable to staff?

1 MS. HOLMES: I'm sorry, I'm not
2 following you. You're talking about BIO-1?

3 HEARING OFFICER RENAUD: BIO-6.

4 MS. HOLMES: BIO-6, I'm sorry. I
5 believe -- Yes, that's correct. We filed
6 testimony to that effect previously.

7 HEARING OFFICER RENAUD: So 45 days
8 before mobilization is all right.

9 MS. HOLMES: Yes.

10 HEARING OFFICER RENAUD: All right. And
11 you are correct, Ms. Holmes, we should look at
12 BIO-1 briefly as well. The current compliance due
13 date is 90 days prior to site mobilization for
14 submitting information regarding the designated
15 biologist and applicant wants to change that to 30
16 days prior to site mobilization. How do we feel
17 about that?

18 MS. HOLMES: We were -- I'm sorry, are
19 we looking at both? Are we looking at the
20 applicant's proposed changes to BIO-1?

21 HEARING OFFICER RENAUD: Yes.

22 MS. HOLMES: It is in two separate
23 places.

24 HEARING OFFICER RENAUD: Okay. Under B
25 on page six.

1 MS. HOLMES: Right. We had agreed to
2 shorten it. We had agreed to shorten the
3 compliance date, the verification for 60 days.

4 HEARING OFFICER RENAUD: To 60, yes.

5 MS. HOLMES: And then below it talks
6 about the information regarding the designated
7 biologist and they are requesting from 90 to 30.
8 Are we talking about both changes together?

9 HEARING OFFICER RENAUD: No, only the
10 second.

11 MS. HOLMES: Okay.

12 HEARING OFFICER RENAUD: Only the one
13 under B.

14 MS. HOLMES: Thank you.

15 HEARING OFFICER RENAUD: It looks to me
16 like you agreed on the other one.

17 MS. HOLMES: Yes, we had. Staff would
18 not support 30 days. We think that that's too
19 much compression of time given that we have
20 already agreed to shorten some time. There is
21 also a need to consult with Fish and Game on this
22 one so we don't think that is appropriate.

23 We would accept 60 days, however. We
24 think that is sufficient time to complete our
25 coordinations.

1 HEARING OFFICER RENAUD: I see you
2 nodding, Mr. Carroll.

3 MR. CARROLL: That would be fine.

4 HEARING OFFICER RENAUD: All right, 60
5 days is where we'll leave it.

6 And under B, item two. A proposed
7 change to BIO-6. Just clarify because now I am a
8 little confused. Did we come to agreement on
9 that? Applicant wants to change 60 days prior to
10 commencement of construction to 45 days before
11 mobilization.

12 MS. HOLMES: Hearing Officer Renaud,
13 could we have two minutes?

14 HEARING OFFICER RENAUD: Please.

15 MS. HOLMES: Because I am not sure we
16 are all talking about the same thing. Thank you.

17 Again, staff would not support the
18 proposed changes. I can provide a witness to talk
19 in more detail about this. But apparently the
20 mitigation measures would need to be in place
21 during site mobilization. Because for the
22 purposes of the Department of California --
23 Department of Fish and Game, construction includes
24 site mobilization. Or I could say it the other
25 way around. But at any rate, you get the idea.

1 So those measures need to be in place. Shortening
2 the time lines would probably not prove workable
3 in terms of beginning construction.

4 HEARING OFFICER RENAUD: Mr. Carroll,
5 any response?

6 MR. CARROLL: If that is Fish and Game's
7 view then no, I guess we don't really have a
8 response to that.

9 HEARING OFFICER RENAUD: All right, we
10 will leave BIO-6 the way it is.

11 Now, the applicant has also asked under
12 Additional Matters, item C, page six, that we add
13 an additional finding to the effect that this
14 decision provides incidental take authorization
15 for desert tortoise and Mojave ground squirrel.

16 I think it is questionable whether you
17 need to say that because of the over-arching
18 jurisdiction of the Energy Commission but I don't
19 mind putting it in. Does staff have any feelings?

20 MS. HOLMES: Staff would just suggest
21 one additional phrase. We would recommend that
22 the sentence read: This decision is based on
23 consultation with the California Department of
24 Fish and Game and is in accordance with incidental
25 take -- Excuse me. I'm sorry, I can't even read

1 my own notes.

2 This decision is based in part on
3 consultation with the Department of Fish and Game
4 and provides incidental take authorization for
5 desert tortoise and Mojave ground squirrel in
6 accordance with the California Endangered Species
7 Act.

8 HEARING OFFICER RENAUD: Mr. Carroll,
9 how did that sound?

10 MR. CARROLL: We had developed some
11 proposed language that is very similar to what
12 Ms. Holmes just read. And so we would concur with
13 the staff's proposed language. We think that
14 addresses the issue.

15 HEARING OFFICER RENAUD: Okay.
16 Commissioners, anything on that?

17 MS. SMITH: A point of clarification.
18 This is really just a question. Maybe Sara Head
19 can answer this if she is still on. It is my
20 understanding that the full incidental take
21 statement will not be final for desert tortoise
22 until EPA finishes its PSD analysis in Section 7
23 and the PSD permit are in place. So I don't know
24 that the Commission can actually confer incidental
25 take with respect to desert tortoise.

1 MS. HEAD: This is Sara Head. There's,
2 you know, both the Fish and Wildlife Service
3 permitting, which is separate, and then there's
4 also the California Department of Fish and Game
5 2081, incidental take. My understanding was that
6 we were talking about the state permit process.

7 MS. SMITH: Okay.

8 HEARING OFFICER RENAUD: Very good,
9 thank you. All right. Now applicant has also
10 asked at the bottom of page six, item C-3, with
11 reference to BIO-9. The daily maintenance
12 monitoring of permanent desert tortoise exclusion
13 fencing, but does not state how long the
14 monitoring is required. Does staff wish to
15 comment on that?

16 MS. HOLMES: I will turn this over to
17 Misa Ward who is the staff biologist assigned to
18 this project and has consulted with Fish and Game
19 with response to the applicant's comments.

20 HEARING OFFICER RENAUD: Thank you.
21 Misa, please go ahead.

22 MS. WARD: I consulted with Becky Jones
23 in the Department of Fish and Game. She has been
24 involved with several of these plants and the
25 monitoring. She clarified that the daily

1 monitoring of the permanent fence would need to
2 occur during construction at frequencies to ensure
3 that there would be no damage from construction
4 activity vehicles, et cetera.

5 And then it could be changed to monthly
6 during operations, except in the event of a heavy
7 rainfall. And by that it would mean one that
8 could release sediment where the fence could be --
9 where that sediment could build up and animals
10 could go over that fence. So the fence following
11 those events would need to be checked. Otherwise
12 in absence of a heavy rainfall it would be monthly
13 during operations.

14 HEARING OFFICER RENAUD: Monthly during
15 construction and operation or just during
16 construction?

17 MS. WARD: Daily during construction,
18 monthly during operation.

19 HEARING OFFICER RENAUD: Mr. Carroll, do
20 you wish to respond?

21 MR. CARROLL: That makes sense and that
22 answers our question of when the daily monitoring
23 ceases. So we appreciate that clarification.

24 HEARING OFFICER RENAUD: All right,
25 thank you.

1 MR. CARROLL: And if I may. I believe
2 that our comment eight went to the same issue. So
3 maybe we can take care of that one at the same
4 time.

5 HEARING OFFICER RENAUD: Yes, thank you.
6 Okay, that's what we'll do. All right.

7 Applicant's item four under Additional
8 Matters for Biology points out that BIO-9
9 paragraph three makes several references to any
10 wildlife but asks that that only apply to
11 sensitive wildlife. Does staff wish to respond on
12 that?

13 MS. HOLMES: I believe that the
14 references in the PMPD are correct except for the
15 last sentence of the first partial paragraph on
16 page 194 which should read, for sensitive
17 wildlife.

18 HEARING OFFICER RENAUD: Mr. Carroll,
19 does that sound correct to you?

20 MR. CARROLL: Yes.

21 HEARING OFFICER RENAUD: All right.
22 Applicant is requesting a change to BIO-10 for the
23 final BRMIMP to be provided. Sixty days prior to
24 the start of any ground-disturbance activities is
25 the current deadline. They would like to change

1 that to 60 days before construction. Comment from
2 the staff on that?

3 MS. HOLMES: Are we on the applicant's
4 item number five on page seven of their comments?

5 HEARING OFFICER RENAUD: Yes we are.

6 MS. HOLMES: Okay. I think what they
7 stated was that this is inconsistent with
8 condition two, which requires that the bird
9 studies be done no less than. And our point was
10 simply that 60 days is not in conflict necessarily
11 with no less than, obviously.

12 HEARING OFFICER RENAUD: Because it
13 could be done.

14 MS. HOLMES: They could do them earlier.

15 HEARING OFFICER RENAUD: Mr. Carroll,
16 how is that in conflict? I guess we aren't seeing
17 that.

18 MR. CARROLL: The conflict that we saw
19 was with respect to BIO-10, paragraph one, which
20 requires the nesting survey be completed 30 days
21 prior to the start of initial ground-disturbance.

22 HEARING OFFICER RENAUD: No less than 30
23 days so it could be more. It could be 60, then
24 you are consistent.

25 MR. CARROLL: It doesn't say. Maybe

1 just explain what the -- Maybe we're fine. Just
2 explain how the timing would work. Maybe we're
3 fine with it.

4 MS. WARD: My understanding was that it
5 would just be that you wouldn't want to have them
6 -- I guess the bottom line is that we're okay if
7 -- we are okay with striking the language which
8 includes nesting bird survey results in necessary
9 impact of measures from the verification of BIO-9
10 if that does seem to create less of a conflict.

11 Again, I guess I am struggling to see
12 where the conflict is with saying, no less than.
13 Was it that you couldn't find the language?

14 MR. CARROLL: I guess where we saw the
15 conflict -- It seemed as though the verification
16 accelerated paragraph one by 30 days. Because
17 under paragraph one we had up until 30 days prior
18 to the start of initial ground-disturbance to
19 complete the nesting surveys. But since the
20 information needed to be included in the documents
21 60 days prior then we essentially lost 30 days in
22 there.

23 MS. HOLMES: And I think that the
24 language he is discussing is in BIO-10, not in
25 BIO-9.

1 MS. WARD: I'm sorry about that, you're
2 right.

3 MR. CARROLL: Yes.

4 MS. WARD: That wasn't the intent, to
5 accelerate it.

6 HEARING OFFICER RENAUD: Okay.

7 MS. WARD: Would it help to delete the
8 text from the verification and then that way
9 it's --

10 MR. CARROLL: I think that would help.

11 HEARING OFFICER RENAUD: Okay. Can you
12 all submit a proposed final version of that that
13 we can incorporate. I think in the discussion
14 back and forth here we don't exactly have the
15 details but I'm sure you can work them out in a
16 few minutes.

17 MS. WARD: No problem.

18 HEARING OFFICER RENAUD: All right.
19 Finally, on Biology before we get to the
20 tortoises. The first sentence of the verification
21 to BIO-11 requires the owner no later than 12
22 months following publication of the Energy
23 Commission decision to provide written
24 verification to the CPM that the habitat
25 compensation purchase has been completed.

1 And the applicant is asking that the 12
2 months, it be either 12 months following
3 publication or 12 months following commencement of
4 ground-disturbing activities. Does staff wish to
5 comment on that?

6 MS. HOLMES: It's not 12 months
7 following the commencement of -- Is it 12 months
8 following the commencement of ground-disturbing
9 activities or?

10 HEARING OFFICER RENAUD: Or upon
11 commencement, I guess.

12 MS. HOLMES: Which is it?

13 MR. CARROLL: It's the later of 12
14 months following either the Energy Commission
15 decision or the commencement of ground-disturbing
16 activities.

17 MS. WARD: But not 12 months following.

18 MS. HOLMES: It's not 12 months
19 following commencement of ground-disturbing
20 activities?

21 MS. WARD: It would be prior to
22 commencing ground --

23 HEARING OFFICER RENAUD: The way it
24 reads now it would be 12 months following
25 publication or 12 months following commencement.

1 MS. HOLMES: Right. Perhaps if we just
2 flipped them. If we said, no later than
3 commencement of ground-disturbing activities or 12
4 months following the publication. Is that what
5 you, is that what you mean?

6 MR. CARROLL: No.

7 MS. HOLMES: Okay.

8 MR. CARROLL: What we mean, within 12
9 months --

10 MS. HOLMES: Of either.

11 MR. CARROLL: -- the latter of, the CEC
12 decision or the commencement of ground-disturbing
13 activities.

14 HEARING OFFICER RENAUD: Well you are
15 likely to commence ground-disturbing activities
16 less than 12 months after publication, right?

17 MR. CARROLL: Actually, in reading this
18 I don't think it makes sense because obviously
19 ground-disturbing activities can't commence
20 before.

21 MS. HOLMES: Right.

22 MR. CARROLL: So I think what we are
23 proposing here is no later than 12 months
24 following commencement of ground-disturbing
25 activities.

1 HEARING OFFICER RENAUD: For submission
2 of verification that the habitat compensation
3 purchase has been completed.

4 MR. CARROLL: Right.

5 PRESIDING MEMBER BOYD: They are
6 maximizing their time.

7 HEARING OFFICER RENAUD: Why do you need
8 the extra time, Mr. Carroll?

9 MR. CARROLL: Because it is proving very
10 time-consuming to get all the parties to agree on
11 appropriate compensation lands.

12 MS. HOLMES: I would point out that in
13 BIO-11 there is language that we incorporated from
14 the California Department of Fish and Game
15 relating to timing. If you look at the bottom of
16 page 196 going up to the top of page 197.

17 It basically requires funding to
18 complete the mitigation measures prior to
19 commencing ground-disturbing activities and within
20 12 months of publication of the Energy Commission
21 decision, whichever occurs first. And I think we
22 should be consistent.

23 HEARING OFFICER RENAUD: Now that one
24 looks to be like it is centered around funding.

25 MS. HOLMES: Correct.

1 HEARING OFFICER RENAUD: And it says,
2 whichever occurs first. So I think we could see
3 that as an inconsistency. These tend to be
4 standardized provisions that have been used
5 before. Absent a strong showing of a need to
6 change them I would say we would be inclined not
7 to change them. I appreciate there's some
8 controversy and difficulty about the mitigation
9 lands.

10 MR. CARROLL: Given the time period that
11 we're talking about let's leave the condition as
12 proposed, with the recognition that we may be back
13 to ask for additional time if we are unable to
14 complete this task within what staff is proposing.

15 HEARING OFFICER RENAUD: And that's
16 always an option. I think that sounds like a good
17 plan. So we'll leave it the way it is.

18 All right. If there's anything else on
19 Biology before we go to BIO-12 let's do that.
20 Otherwise we'll go to BIO-12. This is the
21 Condition of Certification pertaining to desert
22 tortoise mitigation.

23 We have lots and lots of paper and
24 comments about this. There have been numerous
25 versions of it. And the applicant submitted

1 comments on the latest proposed version on June 3.
2 And staff in its comments on the PMPD has
3 addressed those comments.

4 MS. HOLMES: Just so it's clear. What
5 we did was we put the Committee's decision in our
6 comments.

7 HEARING OFFICER RENAUD: Right.

8 MS. HOLMES: And then provided offset
9 staff response to the issues that were raised by
10 the applicant's filing.

11 HEARING OFFICER RENAUD: And in
12 reviewing all this and trying to think of how
13 would be the least confusing way to proceed. I
14 think maybe to use the staff's document as our
15 basis might be the way to go, simply because it
16 contains the latest information. It has the
17 applicant's requested changes and the staff's
18 comments on those changes. How does that sound,
19 Mr. Carroll?

20 MR. CARROLL: That's fine. I think we
21 are going to make this very easy for the
22 Committee.

23 (Laughter)

24 HEARING OFFICER RENAUD: What news?

25 MR. CARROLL: With one question in

1 paragraph 14 we are fine with the condition as
2 proposed by the staff. We appreciate our comments
3 that they have accepted. We understand the places
4 where they did not accept our comments and we will
5 live with those.

6 The only question I have is in paragraph
7 14. And this is a question for the staff just to
8 make sure that I understand. And I am not a
9 desert tortoise relocation expert, although I
10 learned more about it through the process of this
11 project than I ever thought I would.

12 There is a sentence that begins, all
13 translocated animals found during a dawn to dusk
14 search will be monitored. We had proposed for 18
15 months. Staff has proposed for at least 18
16 months. And my question with that is, how do we
17 know when it ends?

18 HEARING OFFICER RENAUD: Does the staff
19 wish to comment on that?

20 MS. WARD: In speaking with the
21 Department of Fish and Game the important markers
22 to hit were in the two spring seasons. So if
23 there were -- We just didn't want to -- I guess to
24 put it simply, we are not concerned with the exact
25 timing of when things start or if you need a skip

1 a month. You know, something extra comes up and
2 you need to go out there again. So we just wanted
3 to be flexible in that way.

4 So as long as you hit the two spring
5 seasons I think the Department of Fish and Game
6 would consider that adequate and so would we.
7 They may have some comments on that. I do think
8 that there is a requirement for at least once a
9 month to be going out there.

10 HEARING OFFICER RENAUD: So maybe
11 instead of having a number of months involved or
12 stated we would state, for a consecutive period of
13 time to include two spring seasons.

14 MS. WARD: Right.

15 HEARING OFFICER RENAUD: Something along
16 those lines.

17 MS. WARD: And the monthly frequency to
18 hit the Fish and Game requirement.

19 HEARING OFFICER RENAUD: I'm sorry, what
20 was that?

21 MS. WARD: And also there would have to
22 be some language to include the monthly
23 requirement on the part of Fish and Game. I think
24 I did bring up with them the idea of being more
25 periodic and they said, well, the minimum would be

1 monthly. And they can correct me on that if I am
2 wrong but I believe that's --

3 HEARING OFFICER RENAUD: Mr. Carroll, is
4 your client okay with the two spring seasons
5 concept?

6 MR. CARROLL: Let me ask Sara Head, who
7 is on the phone.

8 HEARING OFFICER RENAUD: Go ahead.

9 MR. CARROLL: Sara, did you follow that
10 discussion?

11 HEARING OFFICER RENAUD: Sara Head, are
12 you there?

13 MS. HEAD: Yes I am, sorry.

14 HEARING OFFICER RENAUD: Mr. Carroll, I
15 don't think you have a microphone and she might
16 not be able to hear you.

17 MS. HEAD: I cannot hear a single word
18 that Mike has been saying this whole time.

19 (Laughter)

20 MR. CARROLL: I was under the
21 understanding that this was a microphone.

22 HEARING OFFICER RENAUD: That flat one
23 is for the reporter.

24 MR. CARROLL: Okay.

25 HEARING OFFICER RENAUD: There you go.

1 MS. HEAD: Sorry.

2 MR. CARROLL: That's okay. Sara, we are
3 discussing BIO-12, paragraph 14.

4 MS. HEAD: Okay.

5 MR. CARROLL: Let me give you a minute
6 to get that in front of you.

7 MS. HEAD: Arrie just closed his book
8 here so.

9 MR. BACHRACH: I'm reopening it.

10 MR. CARROLL: Arrie Bachrach, also with
11 ENSR, is on the line.

12 Do you have it in front of you?

13 MR. BACHRACH: BIO-12, number 14?

14 MR. CARROLL: Yes.

15 MR. BACHRACH: Yes.

16 MR. CARROLL: In about the middle of
17 that paragraph is a sentence that begins: "All
18 translocated animals found during a day to dusk
19 search will be monitored." We had proposed for 18
20 months, after which transmitters will be removed.
21 Staff had modified our proposal, for at least 18
22 months. My question was, that seemed unclear to
23 me when we would be permitted to end the
24 monitoring. Misa Ward has clarified that what
25 they are really seeking here is two spring

1 seasons.

2 MS. HOLMES: Monthly to include two
3 spring seasons.

4 MR. CARROLL: So the proposal is to get
5 away from the 18 month to something that indicates
6 that for a minimum of two spring seasons.

7 MS. HEAD: Yes, that makes sense to me.

8 MR. CARROLL: Okay.

9 MS. HEAD: We had talked about some of
10 these other changes could be, you know, more tied
11 to making sure that we got the seasonality that we
12 were looking for rather than a specific time line.
13 I think that that would be acceptable.

14 MR. CARROLL: Okay. So then the
15 proposed language would be, will be monitored for
16 a minimum of two spring seasons.

17 And then going back to the monthly. Is
18 the monthly -- that's not dealt with anywhere
19 else? This is a new issue?

20 MS. HEAD: Are you asking me?

21 MR. CARROLL: No I wasn't but let me ask
22 you a question, Sara. Had our understanding been
23 that the monitoring would be monthly?

24 MS. HOLMES: Look at the previous
25 sentence. It refers to monthly in paragraph 13.

1 Excuse me, the previous paragraph. Thirteen
2 refers to monthly.

3 MR. CARROLL: Okay. Then that's fine.
4 I just want to make sure that that's something
5 that our biologists had reviewed. And if it is in
6 the previous paragraph then they have so that's
7 fine.

8 MS. HEAD: And I believe that Kim
9 McCormick was on the line. And Kim, if you can
10 hear me at all and you could just push star-zero
11 and tell the operator you want to talk. I would
12 feel better if Kim could confirm this but it
13 sounds okay to me.

14 UNIDENTIFIED SPEAKER: Yes, me too.

15 MR. CARROLL: Okay. I think we are fine
16 with that.

17 HEARING OFFICER RENAUD: All right. I
18 heard a me too there. I think a little word-
19 smithing is still needed. So I would -- I think
20 the Committee would like the staff and the
21 applicant to get together and word-smith that and
22 submit a final clean version.

23 MR. CARROLL: Okay. And that will
24 provide us an opportunity to speak with
25 Ms. McCormick too.

1 MS. HEAD: Yes.

2 HEARING OFFICER RENAUD: Yes.

3 MS. READ: And Kim is off the line. She
4 got off the phone a little bit ago.

5 HEARING OFFICER RENAUD: Okay, thank
6 you. All right.

7 MR. CARROLL: With that, all of the
8 remainder of the changes proposed by the staff in
9 BIO-12 are acceptable to the applicant.

10 HEARING OFFICER RENAUD: Good, thank
11 you, that helps. That's a big accomplishment and
12 we appreciate that.

13 Let's see now. I have a card from, is
14 it Mr. Alan DiSalvo? Alan DiSalvo, are you there?

15 MR. DiSALVO: I'm here.

16 HEARING OFFICER RENAUD: Yes. And who
17 are you representing?

18 MR. DiSALVO: Mojave Desert AQMD.

19 HEARING OFFICER RENAUD: All right. Do
20 you wish to address the hearing or were you
21 listening?

22 MR. DiSALVO: I understand there is a
23 question about the content of District Rule 1406.

24 HEARING OFFICER RENAUD: Okay. Let me
25 ask you to hold on for a few moments while we

1 complete our work with the Biology section and
2 then we'll come back to Air Quality. All right?

3 MR. DiSALVO: Certainly.

4 HEARING OFFICER RENAUD: Thank you, I
5 appreciate that.

6 Let's see. Is there anyone else on the
7 line with respect to Biology who wished to address
8 the hearing?

9 TELEPHONE OPERATOR: There are no others
10 on-line.

11 HEARING OFFICER RENAUD: All right,
12 thank you.

13 Before we leave Biology I just want to
14 say that here at the Energy Commission we get a
15 daily kind of newsletter/synopsis of stuff in the
16 papers. And there was an article about a month
17 ago in the LA Times about a tortoise translocation
18 program going on with respect to Fort Erwin in the
19 Mojave Desert. The article raised some concerns
20 about an unanticipated rash of what appeared to be
21 coyote attacks. Apparently biologists working on
22 that program have recognized that in the future it
23 needs to be, the issue of predation needs to be
24 addressed.

25 And looking through what we have so far

1 of the translocation plan I don't see it being
2 addressed very much. I was just wondering if
3 there is any further information on that at this
4 point? I know I'm kind of throwing that out as a
5 surprise but does anyone want to comment on that?
6 It's a matter of interest to the Committee and
7 something we might want to address in the Final
8 Decision.

9 MS. MOORE: This is Tonya from the
10 Department of Fish and Game.

11 HEARING OFFICER RENAUD: Please.

12 MS. MOORE: We don't have enough
13 information on that to incorporate that into this
14 project. We don't know why that predation is
15 occurring or how that predation is occurring. And
16 it is too soon in the translocation plan for Fort
17 Erwin to have any conclusive information that
18 would help us.

19 HEARING OFFICER RENAUD: Obviously it
20 sounds like it is being watched with great
21 interest by the biologists who are managing that
22 project. Am I correct about that?

23 MS. MOORE: You are 100 percent correct.

24 HEARING OFFICER RENAUD: All right.

25 PRESIDING MEMBER BOYD: Those of us who

1 have feelings for tortoises were a little
2 concerned so thank you.

3 MS. MOORE: Right.

4 HEARING OFFICER RENAUD: All right,
5 thank you. Okay, is there anything else on
6 Biology? Okay. Now we do --

7 MS. HOLMES: One question.

8 HEARING OFFICER RENAUD: Go ahead, yes.

9 MS. HOLMES: I want to confirm that
10 there is no problem with just simply accepting the
11 comments that we provided today as comments as
12 opposed to testimony. We had submitted the
13 original filing as testimony. But I think that
14 since we have been handling everything else
15 informally, as long as there is no objection we
16 can continue to do that with this item.

17 MR. CARROLL: I think that makes sense
18 from the applicant's perspective.

19 HEARING OFFICER RENAUD: Thank you. And
20 we do have the comments docketed and I think we
21 can, we can make the changes that have been
22 discussed here and that should, that should not
23 pose a problem.

24 Okay, now we do have Mr. DiSalvo from
25 the air district on the line. Mr. DiSalvo, were

1 you called by somebody to address the hearing
2 today?

3 MR. DiSALVO: Yes I was. There was a
4 question about the nature of Rule 1406 that we
5 adopted.

6 HEARING OFFICER RENAUD: All right. Was
7 that you, Mr. Carroll?

8 MR. CARROLL: Yes. Alan DiSalvo, this
9 is Mike Carroll with Latham & Watkins. I think
10 actually the question that arose during the
11 hearing was related to the new source review
12 rules. What the Mojave Desert AQMD rules required
13 in the way of emission offsets in order for a
14 permit to construct to be issued. And
15 specifically whether it required that the offsets
16 simply be identified or that the offsets be in
17 place. And so I think 1406 is obviously related.
18 But the question really related to the new source
19 review rule.

20 MR. DiSALVO: May I answer the former?
21 The new source review rule simply requires that an
22 offset package be identified.

23 MS. HOLMES: Mr. DiSalvo, this is Caryn
24 Holmes, staff counsel. Can you provide me a
25 citation for that to your district rules?

1 HEARING OFFICER RENAUD: Mr. DiSalvo,
2 can you hear Ms. Holmes?

3 MR. DiSALVO: Yes, but I've got to look
4 at the rule now.

5 HEARING OFFICER RENAUD: Okay. I just
6 wanted to make sure you could hear her. We'll
7 give you a moment to look things up.

8 MR. DiSALVO: The offset package
9 requirement is in 1302(C)(5), a Movaje Desert
10 District Rules of course. Subsequent reference to
11 use of offsets is only in relation to beginning
12 actual construction, which is a defined term. And
13 those references are under Issuances of ATCs,
14 which is in Rule 1302(D)(5).

15 HEARING OFFICER RENAUD: Was that B as
16 in boy, five?

17 MR. DiSALVO: D as in dog.

18 HEARING OFFICER RENAUD: D as in dog,
19 five, okay.

20 MS. HOLMES: That's where we were
21 earlier. That refers to --

22 MS. SMITH: That's your handout.

23 MS. HOLMES: That has been properly
24 offset prior to beginning actual construction.

25 MS. HOLMES: Which is also what the FDOC

1 says and the PMPD.

2 MS. HOLMES: I'm sorry, Alan, this is
3 Caryn again. I read five -- I read that section
4 to say that there's no authority to construct
5 unless increase in emissions have been properly
6 offset prior to beginning actual construction.

7 Can you lead me again. Perhaps I missed
8 some of the steps. Perhaps I missed some of the
9 steps. Lead me through the steps that result in
10 your conclusion that they don't need to be
11 provided until operation.

12 MR. DiSALVO: That step requires me to
13 issue an Authority to Construct. It requires the
14 offsets be provided prior to beginning the actual
15 construction. The clause you are looking for
16 needs to be in the permit but the offsets are
17 actually retired at the issuance of ATCs.

18 MS. HOLMES: So in other words, properly
19 offset doesn't mean that you have to -- the
20 applicant doesn't have to actually own them, they
21 just have to identify them?

22 MR. DiSALVO: They don't have to own
23 them, even at the offset package step. Although
24 we have interpreted that in the past as -- when
25 offsets had existed in the case of transference

1 from a different district, we have identified
2 those as option contracts. The requirement you
3 are referring to results in a restriction on the
4 permitted -- the actual Authority to Construct.

5 MS. SMITH: That is not consistent with
6 our reading of the rule. Typically offsets come
7 from another facility which has reduced its
8 emissions to create offsets or closed down. And
9 it is not a matter of this time-consuming thing of
10 paving roads and going through all this
11 rigamarole, it's just a transfer.

12 So the offsets have to be real,
13 quantifiable, all the Clean Air Act requirements,
14 before project construction. it is typically very
15 simple. We just have this convoluted situation
16 here with Rule 1406.

17 MS. HOLMES: That is also consistent
18 with Commission practice. For many years, of
19 course, we required them to be in hand prior to
20 the Commission decision. Which obviously is prior
21 to construction. And there was a change in the
22 statute and we have accepted things such as option
23 contracts.

24 But to the best of my understanding,
25 staff has never indicated that it would be

1 acceptable to provide offsets after construction
2 has commenced. We believe that it is appropriate
3 to provide them prior to construction. And we had
4 interpreted this rule consistent with the way that
5 Ms. Smith is interpreting it.

6 MR. CARROLL: And the applicant
7 appreciates that there is a past practice in
8 place. But the truth of the matter is, I'm sure
9 you are all aware, it is becoming increasingly
10 difficult for us to identify and obtain emission
11 offsets for these projects. And as it becomes
12 increasingly difficult we are having to get more
13 and more creative. And the timing.

14 It is not as simple as it used to be
15 where you simply went out on the market and you
16 bought them and that was all you had to do. And
17 so I think in recognition of those circumstances
18 we are suggesting that a change in the practice of
19 the Commission is appropriate. If permissible by
20 applicable regulations.

21 PRESIDING MEMBER BOYD: The question in
22 my mind is, is it bigger than just Commission
23 practices? Is it rule of law?

24 MR. CARROLL: And that was my last
25 phrase, if consistent with applicable laws and

1 regulations.

2 MS. HOLMES: And my understand that the
3 answer to that depends on the district rule that
4 has been incorporated into the SIP.

5 MS. SMITH: This is the SIP rule. The
6 second piece of paper I provided you has the
7 Federal Register cite to the SIP. Just to make
8 sure I verified it again yesterday afternoon.

9 HEARING OFFICER RENAUD: Correct me if
10 I'm wrong but isn't part of the reason we're kind
11 of stuck on this is that road paving isn't really
12 an offset, as far as I'm concerned. It's more of
13 a mitigation. An offset is something that you
14 could say is on the shelf, you know, It's sitting
15 there waiting for someone else to accept it. And
16 road paving is taking care of something new. It's
17 taking care of a problem that is out there that
18 has not yet been addressed.

19 MS. HOLMES: I don't think staff quite
20 looked at it that way.

21 HEARING OFFICER RENAUD: You wouldn't go
22 with that?

23 MS. HOLMES: No.

24 PRESIDING MEMBER BOYD: As an old air
25 quality --

1 MS. HOLMES: An offset is something that
2 is required as a result of --

3 PRESIDING MEMBER BOYD: As an old air
4 quality guy I am not sure I agree with it either.

5 MS. HOLMES: An offset is something that
6 is required as a result of various Clean Air Act
7 laws and regulations. And road paving can and
8 does in certain instances create offsets when the
9 rules have gone through the approval process.

10 PRESIDING MEMBER BOYD: I think what is
11 happening here is offsets are often already
12 something in a bank and you're withdrawing them
13 from the bank. Here they have to take a physical
14 action to create the offsets so it then can be
15 credited.

16 MS. SMITH: But the larger issue is the
17 rule itself has not been approved. It's a rule
18 that's approved by EPA. And in the SIP it would
19 be federally enforceable and then it would just be
20 up to the applicant to go ahead and make sure that
21 they got the road paving done in a timely manner.

22 We view this as being a two-pronged
23 problem. There's a legal problem here because EPA
24 has not passed on the rule yet and we don't know
25 when and if it will. The Committee should know

1 that these are considered very controversial. We
2 are exchanging combustion-related emissions for
3 dust. And EPA and CARB have both seen these.
4 That's why they are called non-traditional, they
5 have been controversial.

6 So now the air district is trying to get
7 these solidified and put into the SIP. And
8 hopefully they will but it hasn't happened yet.
9 And then there's also the practical timing problem
10 that the applicant is having just getting the road
11 paving done.

12 PRESIDING MEMBER BOYD: Well, just
13 speaking for myself, it's a little bit more
14 complex than just dust. But there is a historical
15 problem of EPA moving with what we used to call,
16 glacial alacrity. And glaciers are changing their
17 alacrity. But anyway, there is a dilemma with EPA
18 taking years and years to process rules. Which
19 puts us all -- It's historically put California
20 businesses and all of us in jeopardy, not knowing
21 what the right rule is.

22 But in any event, we are going to have
23 to tussle with this.

24 ASSOCIATE MEMBER PFANNENSTIEL: May I
25 just ask Ms. Holmes. Clearly there are the two

1 issues here that I think Ms. Smith just
2 identified. There is the one of whether, in fact,
3 the SIP would allow this kind of activity. The
4 legal question. Then the other is the timing.
5 Where are you on the first question? Do you think
6 that it is allowed under this?

7 MS. HOLMES: I see two separate
8 questions. And perhaps I am dividing them up a
9 little bit differently than you are. I see there
10 being a question about the fact that the rule has
11 not yet been approved by EPA. And I believe that
12 we filed a brief on that saying that we didn't
13 think that that was a legal obstacle for a
14 Commission decision.

15 However, the second issue I think is,
16 can the offsets be -- do the offsets under Rule
17 1302 need to be provided prior to construction or
18 prior to operation. And as I said, when we read
19 without doing any additional legal research, the
20 rule, it appeared to us, that the rule required
21 them to be offset prior to actual construction.

22 What I am hearing the district, I think,
23 say is that offset doesn't mean you have to
24 actually obtain them, you can just identify them.
25 That's not consistent with the staff position and

1 we want an offset package. We want the offsets to
2 be obtained. We don't them simply to identify
3 them. So we would like the offsets to be
4 obtained, in place, prior to the commencement of
5 construction.

6 ASSOCIATE MEMBER PFANNENSTIEL: Even
7 though that isn't what the district said you had
8 to do?

9 MS. HOLMES: I am not going to at this
10 -- I am not in a position to interpret the
11 district's rule for them. That's been the staff
12 position in every case that I am aware of. It is
13 that we want the offsets in place prior to the
14 commencement of construction.

15 ASSOCIATE MEMBER PFANNENSTIEL: But the
16 first point on whether the EPA has yet acted. You
17 don't see that as a constraint?

18 MS. HOLMES: No.

19 ASSOCIATE MEMBER PFANNENSTIEL: Thank
20 you.

21 MR. CARROLL: And I would second that,
22 as we indicated in our briefs, and point out that
23 the Commission has routinely approved projects
24 generating offsets pursuant to locally-adopted
25 rules that are not approved into the SIP.

1 A recent example is the priority reserve
2 rule in the South Coast. And the Commission has
3 approved projects that are relying on that rule.
4 It has been duly adopted by the district but has
5 not yet been approved by EPA into the state
6 implementation plan.

7 HEARING OFFICER RENAUD: So the question
8 now boils down to when the road paving would need
9 to be completed by. Is that really where we are?

10 MR. CARROLL: Yes.

11 MS. HOLMES: Right. And as I said,
12 staff's recommendation is that it be completed
13 prior to commencement of construction.

14 HEARING OFFICER RENAUD: And the
15 applicant is at this point saying, well, at least
16 the construction-related part.

17 MR. CARROLL: The applicant's position
18 is that we would have in place, prior to the
19 commencement of construction, sufficient offsets
20 to mitigate the construction emissions. And the
21 remainder of the offsets would be in place within
22 six months of commencing construction.

23 MS. SMITH: In CURE's view there's just
24 utterly no legal authority for allowing that.
25 Just, again, looking at the SIP Rule 1302. I

1 won't reiterate. But it is just not justifiable.
2 And I didn't hear anything in Mr. DiSalvo's
3 reading of his own rule to indicate otherwise. He
4 pointed to the exact same provision that we
5 discussed earlier.

6 HEARING OFFICER RENAUD: Okay. Anything
7 further on that issue? Committee? Anybody?

8 All right, does anyone have anything
9 further on anything with respect to the
10 Victorville PMPD? Yes, Ms. Holmes.

11 MS. HOLMES: Do you want the comments to
12 be submitted? The additional work on BIO-12, Item
13 14, BIO-10 and LAND-2.

14 HEARING OFFICER RENAUD: Could you do it
15 this week?

16 MS. HOLMES: I cannot.

17 HEARING OFFICER RENAUD: You cannot.

18 MS. HOLMES: I am leaving town as soon
19 as this hearing is over. I could do it by next
20 Friday. I don't believe there are major changes.

21 MR. CARROLL: That's fine. We would be
22 prepared to do it this week but we are prepared to
23 accommodate Ms. Holmes' schedule as well.

24 PRESIDING MEMBER BOYD: Well.

25 MS. HOLMES: If Mr. Carroll does the

1 drafting and I can review it on Monday it may be
2 earlier than Friday.

3 MR. CARROLL: I flew in from vacation
4 for this hearing.

5 (Laughter)

6 MS. HOLMES: And I'm planning to fly
7 out.

8 MR. CARROLL: My wife was very
9 suspicious about why the suit was in the suitcase.

10 MS. HOLMES: Should we say, as early as
11 possible next week?

12 HEARING OFFICER RENAUD: Well, here is
13 the problem. The hearing advisor is leaving on
14 vacation.

15 (Laughter)

16 HEARING OFFICER RENAUD: And that's this
17 Saturday. That's why I was hoping to have these
18 things this week. Again, I'm trying to expedite
19 this. But if there is just no way to do it, we'll
20 do the best we can.

21 MS. HOLMES: What I will commit to doing
22 actually is if you send, if you send them I can
23 have someone else take a look at them. And if
24 they look fairly straightforward we can get them
25 approved with somebody else this week. If there

1 is a question it will have to wait.

2 MR. CARROLL: Okay.

3 MS. HOLMES: Is that acceptable?

4 HEARING OFFICER RENAUD: That sounds
5 fine. Just do the best you can.

6 MS. HOLMES: Thank you.

7 HEARING OFFICER RENAUD: Get it to us as
8 quickly as you can.

9 MR. CARROLL: Okay. Applicant will do
10 the initial drafting and submit them to Ms. Holmes
11 with a copy to whoever she indicates.

12 HEARING OFFICER RENAUD: I suspect there
13 won't be a problem there. From what I'm hearing
14 you are pretty much in agreement, it's a matter of
15 word-smithing.

16 PRESIDING MEMBER BOYD: Pack a suit,
17 Ms. Holmes. I just came off vacation. I had to
18 pack a suit for part of that myself. It's
19 becoming a practice.

20 MS. SMITH: CURE has one last question.

21 HEARING OFFICER RENAUD: All right.

22 MR. CARROLL: And I just have one more
23 point of clarification before we wrap too.

24 HEARING OFFICER RENAUD: Ms. Smith, go
25 ahead.

1 MS. SMITH: We apparently missed the
2 June 13 filing deadline for our comments. Would
3 it be okay if I, as quickly as possible, turn my
4 testimony today into written comments and
5 submitted them.

6 HEARING OFFICER RENAUD: Yes, of course.
7 Please do.

8 MS. SMITH: Thank you.

9 PRESIDING MEMBER BOYD: Based on the
10 confusion in the hearing notice.

11 HEARING OFFICER RENAUD: Mr. Carroll.

12 MR. CARROLL: I assume that this is the
13 case but I just want to confirm. We didn't talk
14 about Noise and Vibration and Visual Resources
15 where we, again, staff and applicant have made
16 very similar comments. I assume that both of
17 those are acceptable.

18 HEARING OFFICER RENAUD: Yes. Anything
19 I didn't mention was because it appeared to me
20 that you were all in agreement and there wasn't
21 anything to talk about. If you want to bring
22 anything up now is the time.

23 PRESIDING MEMBER BOYD: Do you all agree
24 that you are all in agreement?

25 MR. CARROLL: With respect to those two

1 issues.

2 (Laughter)

3 HEARING OFFICER RENAUD: All right. If
4 there is nothing further the meeting is adjourned.
5 Thank you.

6 (Whereupon, at 2:52 p.m., the
7 Committee Conference and
8 Evidentiary Hearing was
9 adjourned.)

10 --o0o--

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Conference and Evidentiary Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said conference, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of July, 2008.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345□